party, against whom it is claimed, should be shown to have acquiesced in the counter claim, for the requisite term, the statutory limitation upon rights of entry upon land. This acquiescence implies, that the party against whom the right is claimed should, during the entire period, have been aware of the existence and exercise of such counter-claim. This may be shown by distinct notice to that effect, but where no such notice is attempted to be shown, as was the fact in the principal case, the point of acquiescence must be shown entirely by the nature of the acts done, and the manner in which they were done, as indicating a distinct and definite claim of right to do the acts, and to continue to do them, or else a merely precarious or permissive indulgence. So that in the present case, and in most cases of this character, the acquiescence, being matter of inference mainly, must depend entirely upon the acts done and the natural inference from, and construction of, such acts. And where the claim and the acquiescence both depend entirely upon the nature of the acts done in the assertion of the claim, it would seem but reasonable that such acts should possess the character of clear and unequivocal acts of right and ownership. Rights of such importance to both parties, as are often attempted to be maintained by mere use on the one side, and acquiescence on the other, should never be left to mere conjecture. It may be true, as said in *Perrin* v. *Garfield*, 37 Vt. 310, that, in general, the enjoyment of an easement is to be referred to a claim of right, but it is here said also, that where the act is entirely consistent with a mere temporary indulgence on the part of the owner, it may be treated as an exception to the general rule. We should be inclined, as before intimated, to state the general rule somewhat more strongly against the claimant than it is given above. The act should be of a character to rouse the apprehension of the owner at once, that it is done under a claim of right, or else his silence will not be regarded as an acquiescence in any claim which can ever ripen into right. The cases all agree that the user must be, in fact, adverse in order to raise the presumption of a grant: *Trask* v. *Ford*, 39 Me. 437. And in order that the claim be adverse, it must be known, as such, to the party against whom it is made. In other words there must not only be an adverse claim, but it must be acquiesced in, as such: *Hoy* v. *Sterrett*, 2 Watts 331; BIGELOW, C. J., in *Brace* v. *Yale*, 10 Allen 444.

I. F. R.

Court of Appeals of Maryland.

SUSAN WECKLER v. THE FIRST NATIONAL BANK OF HAGERSTOWN.

Banks, like other private corporations, are confined to the sphere of action limited by the terms and intent of the charter.

In inquiring into the power of a corporation to make contracts, it must be considered, 1st, whether its charter, or the statute law binding upon it, permits or forbids it to make such contract; or, 2d, may such power be implied as incidental to its existence; or, 3d, is the contract foreign to the purposes of its creation.

By sect. 8 of The National Bank Act, authorizing the incorporation of national banking associations, the kind of banking is limited and defined; and, as the act

contains no grant of the power to engage in bond brokerage, it is, therefore, prohibited to them. Nor is it necessary to the purpose of their existence, or in any sense incidental to the business of banking.

In an action of deceit against a national bank, seeking to recover damages for the alleged fraudulent representations of its teller made in the sale to the plaintiff of certain railroad bonds, *Held*, That the business of selling bonds on commission is not within the scope of the powers of national banking associations, and the bank cannot, under any circumstances, carry it on; and being thus beyond its corporate power, the defence of *ultra vires* is open to it, and the bank is not responsible for any false representations, by which the plaintiff may have been damnified, made by its teller, in any such dealing.

APPEAL from the Circuit Court for Washington county.

This was an action of deceit against the appellee, the defendant below, a banking association, organized under the Act of Congress, approved June 3d 1864 (13 Stat. at Large 99, Rev. St. U. S., tit. 62, sects. 5133–5243), now cited as "The National Bank Act."

As such association it was sought to be charged because of alleged fraudulent misrepresentations by its teller, made in the sale of bonds of the Northern Pacific Railroad Company.

The allegations of the *narr.* were that at the time of the making of the representations by the defendant (the appellee), it, as a banking association, made known that a part of its business, as such association, was the purchase and sale upon commission of the bonds of the Northern Pacific Railroad Company; that it caused the appellant, the plaintiff below, to be solicited and induced to purchase two of said bonds, each of the denomination of five hundred dollars, as a safe and profitable investment; that in the making of such solicitation, the teller of the appellee, as its agent, fraudulently, knowingly and falsely represented to the appellant that one J. F. S. had purchased ten thousand dollars' worth of these bonds; that they were better than certain other named bonds, and as good as government bonds; that the interest, when due, would be paid at appellee's counter; that whenever she wished to dispose of them, the defendant would sell the same for her at what they would cost her; that relying solely upon these representations, and moved by no other considerations, she purchased the said bonds, whereby she lost the use of her money, and the defendant, the appellee, became liable to her for the same, with interest, damages, &c.

The demurrer interposed having been overruled, the defendant pleaded the general issue, *Not guilty*.

At the trial, the prayers offered by both plaintiff and defendant were refused, and the jury was instructed:—

"That the National Bank Act, under which the defendant is organized as a banking association, limits the action of the bank to the pursuit of the objects specified in the Act of Congress, and that the purchase and sale of such bonds is not within the chartered powers of the defendant," and although the jury should find the facts set forth in the *narr.*, "still the plaintiff could not recover in this action against the defendant by reason of such representation."

The verdict being for the defendant, the plaintiff appealed.

H. H. Keedy, for appellant.

Albert Small and *George Schley*, for appellee.—But two questions are involved in this issue, both of which were raised upon the demurrer.

First, Does an action of *deceit* lie against a corporation; and

Second, Conceding the facts alleged, and that the action will lie, is the appellee liable, the acts complained of being clearly *ultra vires*.

1. An incorporated company cannot, in its corporate character, be called on to answer in an action for deceit: *Western Bank of Scotland* v. *Addie*, Law Rep. 1 H. L. Sc. 145. The only late case in conflict: *Swift* v. *Winterbotham P. O.*, Law Rep. 8 Q. B. 244, is expressly overruled on appeal to the Exch. Ch. in the same case *sub nom.: Swift* v. *Jewsburg P. O.*, Law Rep. 9 Q. B. 301.

2. The acts complained of are *ultra vires*, and the appellee cannot be bound by any act or representation of its officer in this behalf: *Tome* v. *Parkersburg Branch Railroad Company*, 39 Md. 36; *Penna., Del. & Md. Steam Navigation Company* v. *Dandridge*, 8 Gill & Johns. 248; *Duncan* v. *Maryland Savings Institution*, 10 Gill & Johns. 299; *U. S.* v. *City Bank of Columbus*, 21 How. 356; *Merchants' Bank* v. *Marine Bank*, 3 Gill 125; *Minor* v. *Mechanics' Bank of Alexandria*, 1 Pet. 46; per MARSHALL, C. J.: *Head* v. *Providence Insurance Co.*, 2 Cranch 127, 169; 4 Wheat. 518; 12 Id. 64.

Banking, apart from the very elaborate definition given in the Act of Congress, is defined in *Duncan* v. *Maryland Savings Institution*, *supra*, as "consisting of the right of issuing negotiable notes, discounting notes and receiving deposits;" citing *People* v. *The*

President, &c., of the Manhattan Co., 5 Conn. 383; *The People* v. *The Utica Insurance Co.*, 15 Johns. 390. And see Angell & Ames, Corps., sect. 55, n. 3; Grant on Banking 1, 6, 381, 614; *Bank for Savings* v. *The Collector*, 3 Wall. 495. To this general definition the Act of Congress adds, "buying and selling exchange, coin and bullion."

The construction of the Act, since banking is not in itself a corporate franchise, but a limitation upon and in derogation of common-law rights, must be strict and exclusive: *Curtis* v. *Leavitt*, 15 N. Y. 52; *Bullard* v. *Bank*, 18 Wall. 589. This section is a rescript of sect. 18 of the General Banking Law of New York, passed in 1838, and as to these provisions is *in totidem verbis*.

The New York Act has passed under careful scrutiny, and has met with frequent judicial interpretation. The question in this issue, the power of a bank to traffic in stocks, arose under the New York Act, in *Talmage* v. *Pell*, 7 N. Y. (3 Seld.) 327, and the court, after conceding that stocks might be legitimately bought or taken for many purposes incident to the express power to conduct the business of banking, at p. 343, says: "The proposition, however, to be established, is the right to traffic in them, or to acquire them for the special objects contemplated by the arrangement of the parties in this case; and these sections neither prove nor tend to prove any authority of that nature." * * * "I am, for the reasons suggested, of the opinion that this bank had no authority to traffic in stocks as an article of merchandise.'

The same point was ruled in *Bank Commissioners* v. *St. Lawrence Bank*, Id. 513; *Curtis* v. *Leavitt*, 15 N. Y. 9, 168, and in *Barnes* v. *Ontario Bank*, 19 N. Y. 152. In the construction of the powers of National Banking Associations, in other matters, as given in sect. 8 of the Act, similar views are held by the Supreme Court of Pennsylvania, in *Fowler* v. *Sculley*, 72 Penna. St. 456; *The First National Bank of Lyon* v. *The Ocean National Bank*, a case recently decided by the Court of Appeals of New York, reported 2 Cent. L. J. 267; *Shinkle* v. *The First National Bank of Ripley*, 22 Ohio 516; *Shoemaker* v. *The National Mechanics' Bank*, 2 Abbott U. S. Rep. 416; and *Stewart* v. *The National Union Bank*, Id. 424.

And the principle announced in these cases is fully recognised by this court in *The First National Bank of Charlotte* v. *The National Exchange Bank of Baltimore*, 39 Md. 610. The only

case in conflict is *Leach* v. *Hale*, 31 Iowa 69, and that is so evidently a case of bailment, and nothing more, that not even the positive assertion of the court can avail against the facts. The view taken in this case, too, is fully and satisfactorily controverted in the analogous case decided at its February Term 1875, by the Supreme Court of Vermont: *Wiley* v. *The First National Bank of Brattleboro'*, *ante*, 342.

Persons dealing with the agents or officers of a corporation are held to know the powers of the corporation: *The Miners' Ditch Company* v. *Zellerbach et al.*, 1 Withrow's American Corporation Cases 275 (37 Calif. 543); *Pierce* v. *Madison & Ind. Railroad Co.*, 21 How. 443. Nor will a corporation be held liable for the fraud of its agent committed *colore officii: Mayor & C. C.* v. *Eshbach*, 18 Md. 276; *Same* v. *Reynolds*, 20 Id. 1; *Duckett* v. *County Commissioners A. A. Co.*, Id. 468; *Horn* v. *Mayor & C. C.*, 30 Id. 218; *Foster* v. *Essex Bank*, 17 Mass. 599; *Mechanics' Bank* v. *N. Y. & N. H. Railroad Co.*, 13 N. Y. (3 Kern.) 600. Is the appellee estopped from making such a defence? The doctrine of estoppel, as applicable to such a defence by a corporation, is very clearly put in *Hood* v. *N. Y. & N. H. Railroad Co.*, 22 Conn. 1, 502, thus: "Where a corporation has the power to do an act, they may be estopped from objecting that the form they adopted was not the exact mode prescribed by the charter; but where the question is one of power, they cannot be deemed estopped to deny that they have done what they never could by legal possibility have done." And this principle is held and enforced in *The Penna., Del. & Md. Steam Navigation Co.* v. *Dandridge*, *supra*, and in *Albert & Wife*, v. *The Savings Bank*, 2 Md. 159

The opinion of the court was delivered by

MILLER, J.—A question of importance and of first impression in this state arises on this appeal. It is broadly and clearly whether the bank had authority, under the Act of Congress, to engage in the business of selling bonds of railroad companies on commission.

A bank, like other private corporations, is confined to the sphere of action limited by the terms and intention of its charter. The Supreme Court, in the case of the *Bank of The United States* v. *Dandridge*, 12 Wheat. 68, states the rule by which the powers of

the bank are to be determined thus: "Whatever may be the implied powers of aggregate corporations by the common law, and the modes by which those powers are to be carried into operation, corporations created by statute must depend, both for their powers and the mode of exercising them, upon the true construction of the statute itself:" and in that case the court adopts, as entirely correct and applicable to the bank, the doctrine laid down by Chief Justice MARSHALL in 2 Cranch 167, in reference to an insurance company, viz.: "Without ascribing to this body, which, in its corporate capacity, is the mere creature of the act to which it owes its existence, all the qualities and disabilities annexed by the common law to ancient institutions of this sort, it may be correctly said to be precisely what the incorporating act has made it, to derive all its powers from that act, and to be capable of exercising its faculties only in the manner in which that act authorizes." And in this state the law is well settled that a corporation created for a specific purpose not only can make no contract forbidden by its charter, but in general can make no contract which is not necessary either directly or indirectly to enable it to answer that purpose. In deciding, therefore, whether a corporation can make a particular contract, it must be considered, in the first place, whether its charter or some statute binding upon it forbids or permits it to make such a contract; and if its charter and valid statutory law are silent upon the subject, in the second place, whether the power to make such a contract may not be implied upon the part of the corporation as directly or incidentally necessary to enable it to fulfil the purpose of its existence; or whether the contract is entirely foreign to that purpose. A corporation has no other powers than such as are specifically granted or such as are necessary for the purpose of carrying into effect the powers expressly granted: *Penna., Del. & Md. Steam Navigation Company* v. *Dandridge*, 8 Gill & Johns. 318, 319.

We must, therefore, determine the true construction of the Act of Congress authorizing the formation of these banking associations, and whether the power to make contracts like the one in question is expressly conferred upon them, or is directly or indirectly necessary to enable them to fulfil the purpose of their creation, or is entirely foreign to that purpose.

So far as the purpose of the law is indicated by its title, it is "To provide a national currency, secured by a pledge of

United States bonds, and to provide for the circulation and redemption thereof." After prescribing in previous sections the mode by, and the conditions under which, banking associations may be formed, the 8th section declares that every association so formed shall become a body corporate from the date of its certificate of organization, but shall transact no business "except such as may be incidental to its organization until authorized by the comptroller of the currency to commence the business of banking." Power is then given it to adopt a corporate seal, to have succession by the name designated in its organization certificate, and in that name to make contracts and sue and be sued, to elect directors and other officers, "and exercise under this act all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits; by buying and selling exchange, coin and bullion; by loaning money on personal security, and by obtaining, issuing and circulating notes according to the provisions of this act."

This is the only portion of the statute to which, for the purposes of this case, it is necessary to refer. By it the associations are not simply incorporated *as banks*, and the scope of their corporate business left wholly to implication, but the kind of banking which they may conduct is limited and defined. As we read the language of this 8th sect. it authorizes the associations to carry on banking "by discounting and negotiating promissory notes," &c., and to exercise "all such incidental powers" as shall be necessary to conduct *that business*. The mode in which the incidental powers may be exercised is not defined, but all incidental powers which they can exercise must be necessary or incidental to the business of banking thus limited and defined. To the usual attributes of banking, consisting of the right to issue notes for circulation, to discount commercial paper and to receive deposits, this law adds the special power to buy and sell exchange, coin and bullion; but we look in vain for any grant of power to engage in the business charged in this declaration. It is not embraced in the power to "discount and negotiate" promissory notes, drafts, bills of exchange and other evidences of debt. The ordinary meaning of the term "to discount" is to take interest in advance, and in banking it is a mode of loaning money. It is the advance of money not due until some future period, less the interest which would be due

thereon when payable. The power "to negotiate" a bill or note is the power to endorse and deliver it to another so that the right of action thereon shall pass to the endorsee or holder. No construction can be given to these terms, as used in this statute, so broad as to comprehend the authority to sell bonds for third parties on commission, or to engage in business of that character. The appropriate place for the grant of such a power would be in the clause conferring authority to "buy and sell," but we find that limited to specific things, among which bonds are not mentioned, and upon the maxim, *Expressio unius est exclusio alterius*, and in view of the rule of interpretation of corporate powers before stated, the carrying on of such a business is prohibited to these associations. Nor can we perceive it is in anywise necessary to the purposes of their existence, or in any sense incidental to the business they are empowered to conduct, that they should become bond brokers or be allowed to traffic in every species of obligations issued by the innumerable corporations, private and municipal, of the country. The more carefully they confine themselves to the legitimate business of banking, as defined in this law, the more effectually will they subserve the purposes of their creation. By a strict adherence to that they will best accommodate the commercial community, as well as protect their shareholders.

Such is our construction of this statute, and it is supported by the best considered authorities, and the decided preponderance of judicial opinion in other states.

This eighth section is almost identical in terms (and as respects the present question completely so) with the Banking Act of New York of 1838, ch. 260; and the Court of Appeals of that state, in *Talmage* v. *Pell*, 3 Selden 328, held that banking associations, formed under that law, have authority only to carry on the business of banking in the manner and with the powers specified in the act, and have no power to purchase state stocks to sell at a profit or as a means of raising money except when received as security for a loan or taken in payment of a loan or debt. In speaking of the transaction under review in that case the court says, the banking company "purchased these bonds as they might have purchased a cargo of cotton to send to market, to be sold at the risk of the vendor for the highest price that could be obtained. No authority to traffic in either commodity is expressly given by the law of 1838. It is, therefore, claimed as a power incident to

the business of *banking*. But the 8th sect. of the act declares that this business shall be carried on by discounting bills, notes and other evidences of debt, by loaning money on real and personal security, by buying and selling gold and silver bullion, foreign coin and bills of exchange, &c. The subjects pertaining to the business of banking are designated, and the express powers of the association are limited to them and to such incidental powers as may be necessary to transact the business thus defined by the legislature." They then proceed to show that the claim to base the validity of the contract upon any incidental power is unfounded, and pronounce the transaction illegal, and the assignment by the company of the mortgages which they held, as collateral security for the purchase, void. So also in recent decisions of the courts of last resort, in several of the states where this Act of Congress, and especially its 8th sect., has been considered, we find it construed in entire accord with the view we have taken of it. We refer to *Fowler* v. *Scully*, 72 Penna. St. 456; *Shinkle* v. *First National Bank of Ripley*, 22 Ohio 516; *Wiley* v. *First National Bank of Brattleboro'*, decided by the Supreme Court of Vermont at its February term 1875, (*ante*, p. 342), and *First National Bank of Lyon* v. *Ocean National Bank*, decided by the Court of Appeals of New York. In the last-mentioned case there is a very able opinion of the court by ALLEN, J., in which he says he fully concurs in the views expressed by Judge WHEELER in the Vermont case, and in reference to the case of *Van Leuven* v. *First National Bank of Kingston*, shortly reported (the opinion of the judges not being given) in 54 New York 671, which has been pressed upon our attention by the appellant's counsel, he says it decided no general principle, but by a divided court it was determined that the contract in that case, under the circumstances, was the contract of the corporation and not the individual contract of the president.

We are, therefore, clearly of opinion that this business of selling bonds on commission is not within the scope of the powers of the corporations, and the bank could not, under any circumstances, carry it on: and being thus beyond its corporate powers, the defence of *ultra vires* is open to the appellee: 8 G. & J. 348. It follows from this that the bank is not responsible for any false representations made by its teller to the appellant by which she was induced to purchase the bonds in question. Hence there was

no error in the court's instruction to the jury nor in the rejection of the appellant's first and second prayers.

But by the third and fourth counts of the declaration, and the appellant's third and fourth prayers, it is sought to give another character to the transaction and to place the right to recover upon a different ground.

They present the case in this view, viz.: That there was no sale and *purchase* of the bonds, but by the false representations of the teller, the appellant was induced to *receive* them, instead of money, in payment of the draft on New York, which she presented at the bank to be cashed or collected. It is argued that, in this aspect, the transaction amounts to the same thing as if the teller had cashed the draft by paying her over the counter in depreciated or worthless bank-notes, representing them to be good. But the answer to this position is that there is no evidence in the record to support it. The proof shows that on the 6th of October 1871, the appellant presented at the bank a draft on New York for $1047, and asked the teller if it was good, and if he would cash it. The teller gave her $47 in money and a certificate of deposit for the balance to the effect that she has "deposited in this bank $1000 payable to the order of herself on return of this certificate properly endorsed." This instrument is in the usual form of a certificate of deposit, bears date the 6th of October 1871, and is signed by the teller for the cashier. There is a discrepancy in the testimony as to whether anything was said at that time about investing her money in Northern Pacific Bonds. According to her testimony, as stated in the record, it may be inferred the alleged false representations were then made, but whether before or after she received the certificate of deposit does not clearly appear; and, according to the testimony on the other side, nothing was said about these bonds until some ten or twelve days thereafter, when she returned and insisted upon investing her money. But it is immaterial when this occurred, because it is an undisputed fact that she received and accepted the certificate on that day, long before the bonds were delivered to her. The draft to the extent of $1000 was received by the bank as money, and as such it passed to her credit, and she became the creditor of the bank for that amount as an ordinary depositor. Whatever may have been said at or before this time, it is clear beyond dispute that by this transaction the draft was, as between herself and the bank, cashed or converted

into money, which became hers in the coffers of the bank to use and dispose of as she saw fit. It is further shown by undisputed testimony that these bonds were ordered by the cashier from the Baltimore brokers, and received on the 19th of October 1871, a few days after the order for them was sent; that they remained in the bank until some time in April following, when the appellant, either in person or through an agent, *returned* the certificate of deposit and got the bonds, paying the interest accrued at the time of the purchase out of the January coupons on the bonds which the teller then cashed for her; that she thereafter retained the bonds, collecting the interest upon them up to July 1st 1873, and that they were sold in the market at par and accrued interest up to the financial crisis in the fall of 1873. From these facts the law can regard the transaction in no other light than as a *purchase* of these bonds by the appellant through the teller or cashier, she paying therefor her own money deposited to her credit in the bank. It was entirely competent for the bank to receive the draft for collection, or to accept and receive it as a deposit of so much money; and there is no evidence in the case legally sufficient to authorize a jury to infer that the teller (acting as he would be in that respect in the discharge of his duty and within the scope of his employment) cashed the draft by passing off upon her these bonds instead of money in payment therefor. For these reasons there is no error in the rejection of the last two prayers of the appellant, and the judgment must be affirmed.

Having disposed of the case in this way, it becomes unnecessary to express any opinion upon the question argued at bar whether an action like this will lie against a corporation in its corporate character for deceit practised by its officers or agents.

Judgment affirmed.

So far as we can learn, after very thorough search through the digests and periodicals, the foregoing is the first case in which the power of National Banking Associations, as to the scope of the business of banking, is defined. It follows too, as a fit supplement to the very well adjudged cases, cited in argument, and referred to by the court: *Fowler* v. *Scully*, *Wiley* v. *The First National Bank of Brattleboro*, and *The First National Bank of Lyon* v. *The Ocean National Bank*.

The seeming hardship growing out of the denial of a remedy, in a case falling so apparently within the ordinary purview of banking, is fully and fairly met in the view presented in the Vermont case, *ante*, p. 342, that the plaintiff dealt with the officers of the bank, not from compulsion, but as a matter of choice, and if the officer "assumed to have any power he did not possess, the plaintiff trusted him in that respect and has his responsibility to rely upon to vindicate the assumption."

Indeed, this phase of the case serves to illustrate the wisdom of the decision of the House of Lords in the case *Western Bank of Scotland* v. *Addie*, L. R. 1 H. L. Sc. 145.

The gradual tendency of the decisions of the House of Lords, and on Chancery Appeals, in England, and to some extent of the courts of the several states, is to place the action for *deceit* upon more substantial and clearly defined grounds, the principle of the recovery, and the measure of it as well, being the benefit accruing to the party by whom, or in whose behalf, the false representations are made. The proper action then will be for money had and received. There would be no substantial ground for discrimination in favor of a corporate principal in such actions, were it possible to prove the *scienter* against the real principals, the shareholders or members of the corporation. But this difficulty, except in few and remote cases, is insuperable.

The true principle, however, is unquestionably that announced by Lord CRANWORTH in *Ranger* v. *The Great Western Railway Co.*, 5 H. L. Cases 72; *New Brunswick Railway Co.* v. *Conybeare*, 9 Id. 711; *Western Bank of Scotland* v. *Addie*, *supra*. "An attentive consideration of the cases has convinced me that the true principle is, that these corporate bodies, through whose agents so large a portion of the business of the country is now carried on, may be made responsible for the frauds of those agents to the extent to which the companies have profited from these frauds; but they cannot be sued as wrongdoers by imputing to them the misconduct of those whom they have employed. A person defrauded by directors, if the subsequent acts and dealings of the parties have been such as to leave him no remedy but an action for the fraud, must seek his remedy against the directors personally." There seem to be no cases growing out of contract, where opportunity for the rescission of the contract has passed, which cannot be reached by the action for money had and received; and as in no cases, except *Jeffrey* v. *Bigelow*, 13 Wend. 518, and *White* v. *Sawyer*, 16 Gray 586, has the measure of damages been carried beyond the extent of the benefit accruing from the fraud, there is now no practical reason for a distinct form of action.

Recurring to the principle announced by Judge MILLER, it presents itself as fairly meeting what, but for the independent course of the courts, would soon give rise to innumerable evils. The drift of the age is to the development of corporate enterprise: and with the facility with which corporations are created under general statutes, the frequently poorly defined scope of power, and the tendency to make each the source of gain in every possible direction, it is only by careful judicial limitation of their powers that, on the one hand, they may be restrained within proper bounds, and prohibited from encroachments upon the well-known common-law rights, and on the other that the public may be protected with them. No better instance can be given than this case. *Banking* is not in its nature a corporate franchise; consequently every step outside their charter powers is an infringement of public right.

The cases cited in the opinion, with those of the brief, go very far toward the full judicial interpretation of the powers of National Banking Associations, and the establishment of those limitations of power which serve as safeguards as well to the public, as their own shareholders.

The cases referred to by Judge REDFIELD in his note, *ante*, p. 348; with the cases cited here, include nearly all—all the more important ones—arising upon the construction of this act.

S.